

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN CLINICAL LABORATORY
ASSOCIATION,

Plaintiff,

v.

ALEX M. AZAR, II,
*In His Official Capacity as Secretary
of Health and Human Services,*

Defendant.

Civil Action No. 17-2645 (ABJ)

JOINT MOTION TO ESTABLISH BRIEFING SCHEDULE

Plaintiff American Clinical Laboratory Association (“ACLA”) and Defendant Alex M. Azar, II, Secretary of Health and Human Services (“HHS”) respectfully request that the Court enter an order establishing the proposed briefing schedule set forth below. In support of this request, ACLA and HHS state as follows:

1. ACLA’s complaint in this matter challenges the Secretary’s final rule, *Medicare Program; Medicare Clinical Diagnostics Laboratory Tests Payment System; Final Rule*, 81 Fed. Reg. 41,035 (June 23, 2016).

2. This case was recently remanded to this Court following a decision by the United States Court of Appeals for the District of Columbia Circuit, holding that the statute’s jurisdictional bar does not prevent this Court from considering the merits of ACLA’s challenge. *See Slip. Op., Am. Clinical Lab Ass’n v. Azar*, No. 18-5312 (D.C. Cir.)

3. The parties are in agreement that the issues remaining on remand can and should be addressed in one round of coordinated summary judgment briefing.

4. Accordingly, to avoid unnecessary motions practice and to reduce any burden on the Court, the parties have conferred and reached agreement on the following proposed briefing schedule:

October 14, 2019	ACLA to file a motion for summary judgment.
November 22, 2019	HHS to file its opposition to ACLA's motion for summary judgment, along with any cross-motion for summary judgment.
December 13, 2019	ACLA to file its reply in support of its motion for summary judgment, and its opposition to HHS's cross-motion for summary judgment.
January 10, 2020	HHS to file its reply in support of its cross-motion for summary judgment.

5. As the Court is aware, ACLA has previously sought to expedite these proceedings. ACLA therefore respectfully requests that the Court set this matter for hearing at its earliest convenience following the completion of briefing. HHS defers to the Court's preferences regarding the need for, and the timing of, any argument in this case.

6. A proposed order is attached as Exhibit A.

Dated: October 1, 2019

Respectfully submitted,

/s/ Mark D. Polston

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PROPOSED ORDER

Upon consideration of the Joint Motion to Establish Briefing Schedule submitted by the parties, it is hereby ORDERED that the motion be GRANTED.

The following schedule will now apply in this case:

October 14, 2019 ACLA to file a motion for summary judgment.

November 22, 2019 HHS to file its opposition to ACLA's motion for summary judgment, along with any cross-motion for summary judgment.

December 13, 2019 ACLA to file its reply in support of its motion for summary judgment, and its opposition to HHS's cross-motion for summary judgment.

January 10, 2020 HHS to file its reply in support of its cross-motion for summary judgment.

A hearing in this matter is scheduled for _____.

SO ORDERED.

Signed: Amy Berman Jackson
United States District Judge
[DATE]